IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.194 OF 2005

Moharsingh Hansraj Sharma. ... Petitioner
Versus.
The State of Maharashtra. ... Respondent.

Shri Rajeev Patil with Shri R.P.Suryavanshi for the Petitioner.

Ms.S.D.Shinde, A.P.P. for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 9th August, 2005.

P.C.:

1. Rule. The learned A.P.P. waives service. Considering the controversy involved, the petition is taken up forthwith for final disposal.

2. By the impugned order dated 7th October 2003, the learned 2nd Additional Sessions Judge, Satara, rejected the application for discharge made by the Petitioner under section 227 of the Code of Criminal Procedure, 1973. The present Petitioner is the original Accused No.11.

3. The learned Counsel appearing for the Petitioner submitted that without even referring to any of the material which is placed on record by the prosecution, the Application for discharge has been rejected. He pointed out that while considering the application made

by the Petitioner the learned Judge has only considered the general principles governing the Application for discharge under section 227 of the said Code of 1973 and he has not adverted to the material which is placed on record by the prosecution against the Applicant.

4. The learned A.P.P. submitted that apart from the fact that section 120-B of the IPC has been applied, there is enough material on record to proceed against the Petitioner. The learned A.P.P. has placed reliance on the statement of the witnesses recorded by the prosecution and other material on record. The learned A.P.P. submitted that while considering the application for discharge, the learned trial Judge is not expected to do the exercise of sifting and weighing the material placed on record by the prosecution. The learned A.P.P. submitted that no interference is called for in this petition.

5. I have considered the submissions. A perusal of the impugned order shows that paragraphs 1 to 8 thereof refer to the case of the prosecution and the case of the defence. In paragraph 9 of the impugned order, the learned Judge has referred to the material against the other Accused. In paragraph 10, the learned Judge has referred to the fact that the Accused No.4 and Accused No.15 are absconding. In paragraph 11, the learned Judge has referred to the principles governing the

consideration of the discharge under section 227 of the said Code of 1973. In paragraph 12, the learned Judge has referred to the legal position as regards the Application under section 227 of the said Code of 1973. A perusal of paragraphs 13, 14 and the last paragraph i.e. paragraph 15 shows that there is not even a reference to the material which is allegedly placed on record against the Applicant by the prosecution. All that the learned Judge has said is that there are statements of 145 persons and a bare perusal of the statements shows some involvement of all the accused. While considering the Application for discharge, the learned Judge was required to consider the broad probabilities of the case and the total effect of material before him. He was required to find out whether or not a prima facie case against the Applicant has been made out. The test to determine a prima facie case would naturally depend on every individual case. On a plain reading of the impugned Judgment and Order, it appears to me that the learned trial Judge has not considered the prayer made by the Applicant for discharge in accordance with law. Therefore, instead of keeping the writ petition pending in this Court, with a view to avoid any delay in trial, it is desirable that the application for discharge made by the Applicant should be heard afresh by the learned trial Judge.

6. Hence I pass the following order:

(i) The impugned Judgment and order dated 7th October 2003 in so far as it applies to the Petitioner is quashed and set aside and the Application for discharge made by the Petitioner is restored.

(ii) The learned trial Judge will consider the Application for discharge in so far as the present Petitioner is concerned in accordance with the law. The Application shall be considered and decided as expeditiously as possible and preferably within a period of three months from the date of production of an authenticated copy of this order.

(iii) It is clarified that rest of the order passed by the learned trial Judge is not disturbed.

(iv) The parties and the trial Court to act on an authenticated copy of this order.

Judge.